

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554**

In the Matter of)	
)	
)	
BellSouth's Request for Declaratory Ruling)	WC Docket No. 03-251
That State Commissions May Not Regulate)	
Broadband Internet Access Services By)	
Requiring BellSouth to Provide Such)	
Services to CLEC Voice Customers)	

**Comments of the
ALABAMA PUBLIC SERVICE COMMISSION**

Pursuant to *Public Notice (DA 03-251)* released by the Federal Communications Commission (FCC) on December 16, 2003, the Alabama Public Service Commission (APSC) respectfully submits its comments in response to BellSouth's Request for Declaratory Ruling filed on December 9, 2003.

The Alabama Public Service Commission opposes BellSouth's petition for a Declaratory Ruling that State Commissions may not regulate broadband internet services by requiring BellSouth to provide such services to CLEC voice Customers. The APSC asserts that the State Commissions have the authority and mandate to insure that competitive choices remain available to the local service customers. A state requiring an incumbent local exchange carrier (ILEC) to provide DSL service to customers who chooses to obtain local voice service from another carrier does not impose state

regulation on interstate information services. It protects the ability of consumers to make choices about their local service provider.

The 1996 Telecommunications Act contains numerous provisions protecting and preserving state commission authority to protect local customers. Contrary to BellSouth's claim, the state Commission orders protecting their local customers' rights to choice among local voice carriers violates no federal law or FCC policy.

Four BellSouth states: Florida, Kentucky, Louisiana and Georgia have issued decisions that require BellSouth to cease withholding its FastAccess DSL service to customers who choose a UNE-P carrier for their voice services. The United States Court Eastern District of Kentucky¹ on December 29, 2003, issued its ruling upholding the Kentucky Commission's decision in an arbitration proceeding between BellSouth and Cinergy Communications Company. The opinion maintained that the state commission's authority, under section 252(b) of the 1996 Telecommunications Act, applied to both interstate and intrastate matters, permitting the Kentucky Commission to exert jurisdiction over local competition policy including BellSouth's DSL services. The Court asserted that,

“The 1996 Act incorporated a “cooperative federalism” whereby federal and state agencies “harmonize” their efforts and federal courts oversee this “partnership”² Quite clearly the 1996 Act makes room for state regulations, orders and requirements of state commissions as long as they do not “substantially prevent” implementation of federal statutory requirements. The PSC's order, challenged here by BellSouth, embodies just such a requirement. 47 U.S.C.

¹ BellSouth Telecommunications, Inc v. Cinergy Communications Company, et.al. 2003 U.S. Dist. LEXIS 23976 (E.D. KY)

² Michigan Bell, 323 F.3d at352.

§251(d)(3)(C). It establishes a relatively modest interconnection-related condition for a local exchange carrier so as to ameliorate a chilling effect on competition for local telecommunications regulated by the Commission.” (*U.S. District Court Eastern District of Kentucky. Pg 15*)

Granting BellSouth’s Request for a Declaratory Ruling is not in the interest of competition and consumer’s choice. Customers of BellSouth that have DSL service will be very reluctant to change voice service providers if they cannot continue to use their DSL service. State Commissions are not attempting to regulate Broadband Internet Access. State Commissions are following the requirements of the 1996 Act to open the way for competition in the local service market and provided choices for the consumers. BellSouth’s requested Declaratory Ruling will stifle that competition. The Alabama PSC urges the FCC to deny BellSouth’s Request for a Declaratory Ruling.

Respectfully submitted,

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